

Docket No. 187,335

ON the 11th day of August, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Steven J. Howard, dated June 22, 1994, came on for oral argument.

The claimant appeared by and through his attorney Patrick C. Smith of Pittsburg, Kansas. The respondent and insurance carrier appeared by and through their attorney Vincent A. Burnett of Wichita, Kansas. There were no other appearances.

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of the Preliminary Hearing of June 15, 1994, and the deposition transcripts of Teryl Seibel, Debbie Naff, David S. Grogan, Frank Springer, and Danny Cramer, and the exhibits introduced therein.

The Administrative Law Judge granted claimant's request for medical care and treatment. The respondent and insurance carrier request the Appeals Board to review that finding. The sole issue before the Appeals Board is whether claimant suffered personal injury by accident arising out of and in the course of his employment with the respondent on December 31, 1993.

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

For the reasons expressed below, the Preliminary Hearing Order granting claimant benefits in this proceeding should be affirmed.

The claimant has satisfied his burden of proof by a preponderance of the credible evidence that it is more probably true than not that he sustained personal injury by accident arising out of and in the course of his employment with the respondent while moving a refrigerator on December 31, 1993. A careful review of the evidentiary record indicates that claimant sought treatment at the hospital emergency room on Sunday, January 2, 1994, and attributed his symptomatology to lifting a refrigerator at work on the preceding Friday. Claimant's testimony, in light of the medical records and testimony of respondent's witnesses, is credible and convincing. The different accounts provided by respondent's witnesses lend credence to the adage that everyone perceives events differently.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard, dated June 22, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick C. Smith, PO Box 1449, Pittsburg, KS 66762
Vincent A. Burnett, 300 W. Douglas, Suite 500, Wichita, KS 67202
Steven J. Howard, Administrative Law Judge
George Gomez, Director